

ORDINANCE NO 2019-04AN ORDINANCE TO AMEND AND REPEAL AND RE-CREATE CERTAIN SECTIONS OF  
CHAPTER 17, AND REPEAL AND RE-CREATE ALL OF SECTION 17.05  
OF THE TOWN OF DELAFIELD MUNICIPAL CODE  
RELATED TO CONDITIONAL USES

WHEREAS, On November 27, 2017, the State of Wisconsin enacted 2017 Wisconsin Act 67 related to requiring a political subdivision to issue a conditional use permit under certain circumstances which resulted in requiring substantial evidence, rather than personal preferences or speculation directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit, and

WHEREAS, Chapter 17.05 of the Town of Delafield Municipal Code contains a minimal amount of requirements and standards in order to issue a Conditional Use permit, and

WHEREAS, the Town Board has determined that the current standards within the Town Code do not provide the Town with adequate information to evaluate the Conditional Use request under the "substantial evidence" standard, and

WHEREAS, the Town Board directed the Plan Commission to review Chapter 17 and recommend modifications to the Chapter to incorporate standards for review of requests for Conditional Use Permits,

WHEREAS, upon publication of a Class 2 Notice per Chapter 985 Wisconsin Statutes once each week for two consecutive weeks prior to the hearing, and upon at least 10 days prior written notice to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed Zoning Code territory as required by Wisconsin Statutes Section 62.23(7)(d), the Town Board held a public hearing regarding the tentative recommendation, on November 13, 2018; and

WHEREAS, the Plan Commission has recommended the ordinance be adopted; and

WHEREAS, the Town Board finds that this change to the Town Zoning Code is not a down zoning ordinance because it does not decrease the development density of land and it does not reduce the permitted uses of land, and therefore the super majority requirement of Section 66.10015, Wisconsin Statutes, does not apply to this ordinance; and

WHEREAS, having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such zoning amendments on the health, safety and welfare of the community, and the immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved as well as the

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By Department of Parks &amp; Land Use at 11:08 am, Apr 25, 2019

impact on the surrounding properties as to noise, dust, smoke and odor, and others, hereby determine that the zoning amendments will not violate the spirit or intent of the Zoning Code for the Town of Delafield, will not be contrary to the public health, safety or general welfare of the Town of Delafield, will not be hazardous, harmful, noxious, offensive and will not for any other reason cause a substantial adverse effect on the property values and general desirability of the neighborhoods within the Town, and will be consistent with the Town of Delafield Comprehensive Plan.

NOW, THEREFORE, the Town Board of the Town of Delafield, Waukesha County, Wisconsin DOES HEREBY ORDAIN as follows:

SECTION 1: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.02 entitled, "Rules and Definitions," subsection 2 entitled "Specific Words and Phrases," the definition of "Feed Lot Operation" shall be eliminated in its entirety.

SECTION 2: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.02 entitled, "Rules and Definitions," subsection 2 entitled "Specific Words and Phrases," insert a new definition as follows:

**Self-storage facility.** A facility consisting of individual self-contained storage units or spaces leased to individuals, organizations or businesses for storage of personal property. A storage facility that is accessory to the principal use on the property and used solely by occupants of the property where located is excluded from this definition of a self-storage facility.

SECTION 3: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific District," subsection F. entitled "A-1 Agricultural District," subsection 2., entitled, "Use Regulations," subsection a. entitled Permitted Uses, shall be amended to read as follows:

(8) Creameries

SECTION 4: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific District," subsection F.

entitled "A-1 Agricultural District," subsection 5., entitled, "Area Regulations," subsection a., shall be repealed and recreated to read as follows:

(1) Lot Size

Minimum area shall be 40 acres. If land is developed into a subdivision, it shall meet the PUD requirements of Section 17.05 5. AM. of these regulations.

SECTION 5: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific District," subsection F. entitled "A-1 Agricultural District," subsection 2., entitled "Use Regulations," subsection b. entitled "Permitted Accessory Uses", shall be amended to read as follows:

(10) Quarters for Household or Farm Employees

(a) Quarters shall be occupied only by a full time employee who works on the premises and members of the employee's family

(b) Number of employees that can have quarters on the premises is five (5).

(c) A deed restriction shall be filed in the Register of Deeds office prior to allowance of the use indicating that the living unit is for employees of the farm and their families, and that there can be no more than 5 employees that can have quarters on the farm.

SECTION 6: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific District," subsection H. entitled "A-2 Rural Home District," subsection 2., entitled, Use regulations, subsection a. entitled "Permitted Uses," subsection (2) (b) shall be repealed and recreated to read as follows:

(i) If more large animals or equivalent fowl or small animal(s) or combination thereof is desired, beyond the maximum allowed on the lot per subsection a. (2) (a) above, they shall only be permitted as a Conditional Use under section 17.05 5. W J. Keeping of Poultry or Livestock.

SECTION 7: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific District," subsection H. entitled "A-2 Rural Home District," subsection 2., entitled "Use Regulations," subsection b.

entitled "Permitted Accessory Uses", subsection (4) is hereby repealed and recreated to read as follows:

(4) Roadside stands, provided off-street parking is made available for at least four vehicles. ~~except that roadside stands on properties of 10 acres or less shall require a conditional use permit under section 17.05 5. AC. Other Uses.~~

SECTION 8: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific District," subsection H. entitled "A-2 Rural Home District," subsection 2., entitled "Use Regulations," subsection b. entitled "Permitted Accessory Uses", shall be amended to read as follows:

- (7) Quarters for Household or Farm Employees on Farms over 10 acres  
(a) Quarters shall be occupied only by a full time employee who works on the premises and members of the employee's family  
(b) Number of employees that can have quarters on the premises is five (5).  
(c) A deed restriction shall be filed in the Register of Deeds office prior to allowance of the use indicating that the living unit is for employees of the farm and their families, and that there can be no more than 5 employees that can have quarters on the farm.

SECTION 9: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific District," subsection H. entitled "A-2 Rural Home District," subsection 5., entitled "Area Regulations," subsection a. entitled "Lot Size", shall be repealed and recreated to read as follows:

- a. Lot Size  
Minimum area shall be 3 acres. If land is developed into a subdivision, it shall meet the PUD requirements of Section 18.16 of the Town Code, subject to the allowance stated in Chapter 18.16 6. d.

SECTION 10: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection J. entitled "B-1 Restricted Business District," subsection 2., entitled "Use Regulations," subsection a. entitled "Permitted Uses," shall be repealed and recreated to read as follows:

a. Permitted Uses

The following uses shall be permitted in the B-1 Restricted Business District, subject to approval by the Plan Commission, of building, site and operational plans:

- (1) Retail stores and shopping, offering convenience goods and personal services.
- (2) Business, professional or public service offices.
- (3) Customer service establishments such as restaurants (excluding drive-through or drive-in restaurants), shoe repair, barber and beauty shops, studios and similar uses.
- (4) Antique shops, gift shops, arts and craft studios and similar uses.

SECTION 11: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection K. entitled "B-2 Shopping Center District", subsection 2., entitled "Use Regulations," subsection a. entitled "Permitted Uses," shall be repealed and recreated to read as follows:

a. Permitted Uses

The following uses shall be permitted in the B-2 Shopping Center District, subject to approval by the Plan Commission, of building, site and operational plans:

- (1) Retail stores and shopping, offering convenience goods and personal services.
- (2) Business, professional, public service, banking and savings and loan offices.
- (3) Customer service establishments such as restaurants (excluding drive-through and drive-in restaurants) shoe repair, barber and beauty shops, studios and similar uses.
- (4) Laundromats, dry cleaning establishments and laundry or dry cleaning pick up stations.
- (5) Dental and medical clinics.
- (6) Display galleries and training schools.
- (7) Public utility offices.
- (8) Antique shops, gift shops, arts and craft studios and similar uses.

SECTION 12: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection L. entitled "B-3 Business Park District", subsection 2., entitled "Use Regulations," subsection a. entitled "Permitted Uses," shall be repealed and recreated to read as follows:

a. Permitted Uses

The following uses shall be permitted in the B-3 Business Park District, subject to approval by the Plan Commission, of building, site, landscape and operational plans:

(1) Professional offices, corporate offices, administrative offices, studios, business centers, laboratories and similar operations not involving retail or commercial sales, industrial use or residential use.

(2) Restaurants (excluding drive-through and drive-in restaurants).

SECTION 13: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection M. entitled "M-1 Industrial District," subsection 2., entitled "Use Regulations," subsection a. entitled "Permitted Uses," shall be amended to include the following:

(11) Commercial Greenhouses.

(12) Laboratories for testing, experimental or analytical purposes.

SECTION 14: Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection M. entitled "M-1 Industrial District," subsection 2., entitled "Use Regulations," subsection a. entitled "Permitted Uses," subsection (2) shall be repealed and recreated to read as follows:

(2) Industrial and commercial operations, the character of which complements the surrounding area and which are not for any reason detrimental thereto. Self-storage facilities as defined herein shall be regulated as a Conditional Use.

**SECTION 15:** Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection M. entitled "M-1 Industrial District," subsection 6., entitled "Additional Regulations," subsection i. shall be amended to read as follows:

- i. The operation plan submitted for Plan Commission approval shall specify and quantitatively describe any noise, vibration, dust, gas, smoke, toxic matter and odors produced by the operation and plans for containing or abating such nuisance, including fertilizers or chemicals.

**SECTION 16:** Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.04 entitled, "Zoning Districts," subsection 5 entitled "Specific Districts," subsection N. entitled "P-1 Park and Recreation District", subsection 5., entitled "Area Regulations," subsection d. shall be repealed and recreated to read as follows:

- d. **Open Space**  
Ninety percent (90%) of each lot shall remain as open space except as follows: (1) the footprint of rustic structures shall not be counted as impervious area in the open space calculation. ~~(2) The open space may be reduced pursuant to a conditional use for public and semi-public buildings and uses, granted pursuant to Section 17.05 5-AH., provided that the open space is not reduced below 60%.~~

**SECTION 17:** Chapter 17 of the Town of Delafield Municipal Code entitled "Zoning," Section 17.05 entitled "Conditional Uses," is hereby repealed and recreated to read as follows:

#### **SECTION 17.05**

#### **CONDITIONAL USES**

##### **1. APPROVAL REQUIRED.**

Certain uses and situations are of such a special nature, or are so dependent upon actual contemporary circumstances as to make impractical the predetermination of permissibility or the detailing in the chapter of the specific standards, regulations or conditions which would permit such use. Therefore, these uses, upon determination in each individual situation, may be permitted as conditional uses in such district, subject to such requirements as are hereinafter specified for each situation.

## **2. BASIS OF APPROVAL.**

The determination of such conditional use by the Town Board shall be based on whether or not the proposed use will violate the spirit or intent of the chapter; be contrary to the public health, safety or general welfare; be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factor; or for any other reason cause an adverse effect on the property values and general desirability of the neighborhood. Except as may be specifically otherwise provided, any such use shall conform to the building location, height, area, yards, parking, loading, traffic and highway access regulations of the district in which it is located and the approving body may require compliance with such other conditions as may be deemed necessary in the specific situation in addition to any which may be herein stated. The location, building plan, site plan, and plan of operation shall be in sufficient detail to enable the Town to make its determination as to the appropriateness of the proposed grant of conditional use. The Town may take into consideration architectural and landscape treatments. Satisfactory provision shall be made for parking and circulation needs, for drainage and sewage disposal, for adequate planting screen where necessary, for operational control devices where necessary to eliminate noise, dust, odor or smoke; and such other factors as would be pertinent to such determination. Variances shall only be granted as provided in section 17.10 of this Chapter.

## **3. PROCEDURE.**

### **A. Petition.**

A request for grant of conditional use status shall be submitted in writing to the Town Clerk who shall promptly refer such petition to the Plan Commission for recommendation.

### **B. Data Required.**

Such petition shall be accompanied by appropriate data and information necessary for proper evaluation of the request including specifically the following:

1. Names, addresses and phone numbers of the applicant, owner of the site, architect, engineer, and contractor.
2. The site legal description, location, zoning district, building and site plans, and plan of operation.
3. An accurate map of the property drawn to a reasonable scale, including indication of general terrain and topographic characteristics, the location of all significant terrain features such as streams, ponds, tree growth, etc., and the location of all existing structures.
4. An accurate and complete written description of the use for which conditional grant is being requested including pertinent statistics and operational characteristics (plan of operation).
5. An accurate and complete description of the current use of existing building and land.
6. Plans and other drawings showing proposed development of the site and buildings including landscape plans, location of parking and service areas, driveways, exterior lighting, type of building material, etc.
7. The names and complete mailing address, including zip code of the owners of all properties within 300 feet of any part of the land included in the proposed use.



8. Any other pertinent information required by the Code Enforcement Officer, Town Engineer, Plan Commission or Town Board as set forth in forms supplied by the Town including percolation test results and well water data.
9. The person applying for a conditional use permit shall certify on the application that the information contained therein is accurate and complete to the best of that person's knowledge.

**C. Public Hearing.**

Within a reasonable time after an application and all required information has been filed, a public hearing shall be held by the Town Board jointly with the Plan Commission pursuant to section 17.10 of this chapter. Within 40 days after the public hearing and all investigation, the Plan Commission shall make a recommendation to the Town Board unless the time is extended by the Petitioner.

**D. Fee.**

Any petition shall be accompanied by a fee as set from time-to-time by the Town Board to defray the cost of notification and holding of public hearing. Costs incurred by the Town in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner.

**4. DETERMINATION.**

The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations. Said decision shall be stated in writing and a copy made a permanent part of the Town records. If conditional use status is not granted, the reasons therefor will be included in such record. A grant of conditional use status, subsequent changes or additions thereto and terminations thereof shall be in accordance with the following:

**A. Recording.**

1. An official record of such conditional grant shall be prepared by the Town Clerk on a form prescribed therefor which shall include the description of the use for which the grant is given and all conditions attached thereto as well as a copy of the resolution of the Town Board approving the grant. A copy of the completed form shall be recorded at the Waukesha County Register of Deeds as a covenant on the title for the premises for which the conditional use was granted.
2. The occupancy permit shall be appropriately noted as to the conditional status granted.
3. Indication shall also be made on the zoning map by appropriate code number or symbol.

**B. Changes or Additions.**

Subsequent change or addition to the approved plans or use shall first be submitted for approval to the Plan Commission and, if in the opinion of the Plan Commission, such change or addition constitutes a substantial alteration, a public hearing before the Plan Commission shall be required, and notice thereof be given pursuant to this Chapter.

**C. Conditions.**

Conditions such as landscaping, architectural design, type of construction, floodproofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements may be required by the Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Chapter.

**D. Termination.**

Where a conditional use does not continue in conformity with the conditions of the original approval, or where it appears that the information shown on the Petitioner's application was not accurate or complete, or where a change in the character of the surrounding area or of the use itself causes it to be no longer compatible with surrounding areas or for any cause based upon consideration for the public welfare, the conditional grant may be terminated by action of the Town Board following referral to the Plan Commission for public hearing and recommendation thereon.

**E. Standard Conditional Use Conditions.**

The standard conditions listed below are automatically incorporated into the terms of a Conditional Use Permit issued under this section, unless otherwise stated in the Conditional Use Permit.

1. Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In case of a question as to the classification of use, the question shall be submitted to the Town Plan Commission for determination.
2. No use is hereby authorized unless the use is conducted in a lawful, orderly and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption or exception to any law, ordinance, order or rule of either the municipal governing body, the County of Waukesha, the State of Wisconsin, the United States of America or other duly constituted authority, except only to the extent that it authorizes the use of the subject property above described in any specific respects described herein. This order shall not be deemed to constitute a building permit, nor shall this order constitute any other license or permit required by Town ordinance or other law.
3. This conditional use hereby authorized shall be confined to the subject property described, without extension or expansion other than as noted herein, and shall not vary from the purposes herein mentioned unless expressly authorized in writing by the Town Plan Commission as being in compliance with all pertinent ordinances.
4. All buildings and grounds shall be maintained in a neat, attractive and orderly way.
5. The property shall comply with all rules and regulations of the Town of Delafield and the local Fire Department, including submission to routine inspections by Town and Fire Department staff.

6. The site shall meet all Waukesha County storm water requirements and gain Waukesha County stormwater management plan approval prior to the execution of the Conditional Use Permit, if said site meets the applicability criteria found in Section 14.333 of the Waukesha County Stormwater ordinance
7. Should the permitted conditional use be abandoned in any manner, or discontinued in use for twelve (12) months, or continued other than in strict conformity with the conditions of the original approval, or should the petitioner be delinquent in payment of any monies due and owing to Town, or should a change in the character of the surrounding area or the use itself cause it to be no longer compatible with the surrounding area or for similar cause based upon consideration of public health, safety or welfare, the conditional use may be terminated by action of the Town Plan Commission, pursuant to the enforcement provisions of this Conditional Use Order, and all applicable ordinances.
8. Any change, addition, modification, alteration and/or amendment of any aspect of this conditional use, including but not limited to an addition, modification, alteration, and/or amendment to the use, premises (including but not limited to any change to the boundary limits of the subject property), structures, lands or owners, other than as specifically authorized herein, shall require a new permit and all procedures in place at the time must be followed.
9. Unless this conditional use permit expressly states otherwise, plans that are specifically required by this conditional use order may be amended upon the prior approval of the Town Plan Commission if the Town Plan Commission finds the plan amendment to be minor and consistent with the conditional use permit. Any change in any plan that the Town Plan Commission feels, in its sole discretion, to be substantial shall require a new permit, and all procedures in place at the time must be followed.
10. Petitioner and Owner Agreement. As a condition precedent to the issuance of the conditional use permit, the owner of the Subject Property shall approve the issuance of this conditional use permit upon the terms and conditions described herein in writing, and the Petitioner is required to accept the terms and conditions of the same in its entirety in writing.
11. Professional fees. Petitioner shall, on demand, reimburse the Town for all costs and expenses of any type that the Town incurs in connection with this application, including the cost of professional services incurred by the Town (including engineering, legal, planning and other consulting fees) for the review and preparation of the necessary documents or attendance at meetings or other related professional services for this application, as well as for any actions the Town is required to take to enforce the conditions in this conditional approval due to a violation of these conditions.
12. Payment of charges. Any unpaid bills owed to the Town by the Subject Property Owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Town; shall be placed upon the tax roll for the Subject Property if not paid within thirty (30) days of billing by the Town, pursuant to section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Town, including possible cause for termination of this approval.
13. Current Address. The Petitioner is obligated to file with the Town Clerk a current mailing address and current phone number at which the Petitioner can be reached, which must be continually updated by the Petitioner if such contact information should change, for the duration of this conditional use. If the Petitioner fails to maintain such current contact information, the Petitioner thereby automatically waives notice of any proceedings that may be commenced under this conditional approval, including proceedings to terminate this conditional use.
14. Conditions Shown in Minutes Incorporated. All conditions of approval imposed by duly adopted motion of the Town Board in its consideration of the Petitioner's application, as noted in the Minutes of the Town Board meeting at which approval was granted, are specifically incorporated herein by

reference.

15. Should any paragraph or phrase of this conditional use permit be determined by a Court to be unlawful, illegal or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the conditional use and the remainder shall continue in full force and effect.
16. If any aspect of this conditional use permit or any aspect of any plan contemplated and approved under this conditional use is in conflict with any other aspect of the conditional use or any aspect of any plan of the conditional use, the more restrictive provision shall be controlling as determined by the Town Plan Commission.

#### **F. Performance Standards.**

1. It is the intent of this Section to describe performance standards for the regulation of uses and to establish an objective and equitable basis for control and to insure that the community is adequately protected from potential hazardous and nuisance-like effects. These performance standards are designed to limit, restrict, and prohibit the effects of those uses outside their premises or zoning district. In addition, these performance standards are intended to comply with other applicable local, state and federal codes and standards. All structures, lands, air and water shall hereafter comply with the following performance standards.

##### **2. Control of Odors**

No operation or activity shall emit any substance or combination of substances in such quantities that create an objectionable odor. The Plan Commission reserves the right to request an odor control plan from the applicant to identify potential odors and implement recommendations from the plan.

##### **3. Control of Fire and Explosive Hazards**

- a. All uses involving the manufacturing, utilization, processing, or storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and with adequate firefighting and fire suppression equipment and devices as may be required by the Fire Prevention Code.
- b. All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in completely enclosed buildings which have noncombustible exterior walls and an automatic fire extinguishing system.
- c. The storage of fuels and other materials that produce flammable or explosive vapors shall be permitted only after review and approval by the Town of Delafield Fire Department and in accord with their requirements to minimize fire and explosive hazards.

##### **4. Glare, Heat and External Lighting**

- a. No operation or activity shall produce any intense lighting, glare or heat with the source directly visible beyond the boundary of the property line. Operations producing light, glare, or heat shall be conducted within an enclosed building.
- b. External lighting shall be shielded so that light rays do not adversely affect adjacent uses.

##### **5. Water Quality Standards**

- a. No activity shall locate, store, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that might runoff, seep, percolate, or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as objectionable shore

deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be harmful to human, animal, plant, or aquatic life.

- b. No activity shall withdraw water or discharge any liquid or solid materials so as to exceed or contribute toward exceeding the minimum standards and those other standards and the application of those standards set forth in Wis. Adm. Code NR 102 or in other applicable Chapters which regulate water quality.

#### **6. Noise**

No operation or activity shall transmit any noise beyond the boundaries of the property so that it becomes a nuisance.

#### **7. Vibration**

- a. No operation or activity shall transmit any physical vibration that is above the vibration perception threshold of an individual at or beyond the property line of the source. Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a reasonable person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.
- b. Vibrations not directly under the control of the property user and vibrations from temporary construction or maintenance activities shall be exempt from the above standard.

#### **8. Traffic Impact**

- a. The Plan Commission reserves the right to require a traffic impact study in order to identify impacts to adjacent properties and roadways and to identify improvements or actions required to minimize or eliminate impacts. No use shall be approved unless the applicant implements the conclusions and recommendations of the study unless otherwise approved by the Plan Commission. The traffic study shall be prepared by a registered professional engineer in accordance with the following standards:
  - Manual on Transportation Studies (Institute of Transportation Engineers (ITE))
  - Traffic Impact Analysis Guidelines (Wisconsin Department of Transportation)
  - Manual on Uniform Traffic Control Devices (Federal Highway Administration)
  - Trip Generation Manual (Institute of Transportation Engineers)
  - Other local, county or state standards

### **5. CONDITIONAL USES PERMITTED.**

Subject to the foregoing, in addition to such uses enumerated in the district regulations, the following may be permitted as conditional uses in the districts specified, provided further that a public hearing pursuant to this Chapter shall be held before approval for any such conditional use is granted.

- A. Animal Hospitals and Kennels.** This provision does not apply to hobby kennels as defined by section 17.02. Hobby kennels are separately provided for in this chapter.

1. **Where Permitted.** Subject to the provisions of subsection 2, animal hospitals and kennels, are conditional uses which may be permitted in the following districts:

**Animal Hospitals**

A-1 Agricultural District  
B-2 Shopping Center District  
M-1 Industrial District  
B-3 Business Park District

**Kennels**

A-1 Agricultural District  
A-2 Rural Home District  
M-1 Industrial District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to animal hospitals or kennels unless all of the following standards are met:

- a. Except for animal hospitals, no such use shall be permitted on a lot less than 5 acres in area.
- b. No building other than one used only for residential purposes shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.
- c. Any building having indoor kennels shall be adequately soundproofed.
- d. The facility shall be maintained in a sanitary condition. Plan shall be submitted and approved for waste removal and method of addressing odors.
- e. Dogs allowed to be in outside kennels or fenced in play areas shall be at least 150 feet from any property line.
- f. Dogs taken outside the kennel area or fenced in play area (e.g. for a walk) shall be on a leash and shall remain on the property.
- g. Drop off and pick-up times shall be between 6 am and 10 pm.
- h. Traffic circulation shall be designed to minimize light and sound to adjacent landowners.

**B. Bed and Breakfast Establishments.**

1. **Where Permitted.** Subject to the provisions of subsection 2., bed and breakfast establishments are conditional uses which may be permitted in the following districts:

R-1 Residential District  
R-2 Residential District  
R-L Residential Lake District  
A-1 Agricultural District  
A-2 Rural Home District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to bed and breakfast establishments unless all of the following standards are met:

- a. Use of the facility as a bed and breakfast establishment automatically terminates a transfer or sale of property.
- b. All bed and breakfast establishments shall be subject to and comply with Wisconsin Administrative Code HSS 197 which is hereby incorporated by reference. Any future amendments, revisions or modifications of the current or future codes incorporated herein are intended to be a part of this Code in order to secure uniform statewide regulation of bed and breakfast establishments.
- c. Each bed and breakfast establishment shall be required to keep a register and require all guests to sign such register using their actual names and address before being assigned quarters. The register shall be available for inspection by the Police Department and Code Enforcement Officer for a period of not less than one year.
- d. No guest may be permitted to occupy space in a bed and breakfast establishment for a longer period than fourteen (14) consecutive days.
- e. A minimum of one off-street parking stall is provided for every guest bedroom with a minimum of two additional for the owner/proprietor. All parking areas meet the size requirements of the Town Code and must be hard-surfaced and maintained in a reasonably dustless condition. The parking areas abutting residential properties is screened from view using a minimum 6' high solid fence or comparable screening. No off-street parking shall be allowed within the front yard setback area and shall be a minimum of 3' from any side yard property line.
- f. Sign proposed meets Town sign code requirements.
- g. Every bed and breakfast establishment shall be properly addressed with numbers on the front of the structure, a minimum of 5" high and of contrasting color so as to be visible from the street.
- h. The applicant shall provide evidence that the proposed use will not impact the surrounding neighborhood and proximity to any existing bed and breakfast establishment.
- i. Applicant has received an occupancy permit and is in compliance with all state and local regulations and ordinances.
- j. Use of the bed and breakfast facility for any special gathering (i.e. wedding receptions, parties, etc.) is prohibited.
- k. The owner of a bed and breakfast shall live on the premises.
- l. All refuse containers shall be screened from view.

**C. Churches, Synagogues and Other Buildings for Religious Assembly.**

- 1. **Where Permitted.** Subject to the provisions of subsection 2., churches, synagogues, or other buildings for religious assembly are conditional uses which may be permitted in the following districts:

R-1 Residential District  
 R-1 A Residential District  
 R-2 Residential District  
 R-3 Residential District  
 R-L Residential Lake District  
 A-1 Agricultural District  
 A-2 Rural Home District  
 A-3 Suburban Home District  
 B-1 Restricted Business District  
 B-2 Shopping Center District  
 B-3 Business Park District  
 M-1 Industrial District

**2. Standards Under Which Permitted.**

Conditional use status shall not be granted to churches, synagogues or other buildings for religious assembly unless all of the following standards are met:

- a. The structure conforms to double the offset requirements of the district in which it is located; however, no building shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.
- b. The height limitation of the district in which the use is located does not exceed 50' provided the minimum required setback and offsets shall be increased 2' for every additional foot of height in excess of the permitted maximum in that district. The aforesaid height regulation shall not apply to the spire or belfry of a church except where airport safety zone regulations specifically limit the maximum height.
- c. The open space for the facility shall be a minimum of 50%.
- d. Site meets Town parking requirements.
- e. Access locations meet site distance requirements.
- f. A traffic study shall be prepared by a registered professional engineer to identify impacts to adjacent properties and roadways and to identify improvements or actions required to minimize or eliminate impacts. No use shall be approved unless the applicant implements the conclusions and recommendations of the study unless otherwise waived by the Plan Commission. The traffic study shall be prepared in accordance with the following standards:
  - Manual on Transportation Studies (Institute of Transportation Engineers (ITE))
  - Traffic Impact Analysis Guidelines (Wisconsin Department of Transportation)
  - Manual on Uniform Traffic Control Devices (Federal Highway Administration)
  - Trip Generation Manual (Institute of Transportation Engineers)
  - Other local, county or state standards
- g. The lot is at least 3 acres in area, except that this area requirement shall not apply in the following districts:
  - B-1 Restricted Business District
  - B-2 Shopping Center District
  - B-3 Business Park District



#### M-1 Industrial District

- h. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.

#### **D. Commercial Planned Unit Development**

- 1. **Where Permitted.** Subject to the provisions of subsection 2. commercial planned unit developments are conditional uses which may be permitted in the following districts:

B-2 Shopping Center District  
B-3 Business Park District  
M-1 Industrial District

- 2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to a commercial planned unit development unless all of the following conditions are met:

- a. No structures or sewage disposal systems shall be allowed in the Wetland-Floodplain District or within 75' of the district.
- b. A minimum amount of permanent common open space shall be set aside in each development as shown in Table 17-1.
- c. The unified and planned development of a site, in single or corporate ownership at the time of development, may be permitted in a planned development without the customary division into individual lots and without requiring strict compliance with the specific district regulations, subject to the requirements of this section. In order to accomplish this intended unified planned development, the Town shall consider all structures and uses on the entirety of each Lot that is included, or included in part, within the jurisdiction of the Town of Delafield Zoning ordinance, in the development. By petitioning for a Commercial Planned Unit Development conditional use, the petitioner accepts that the Town will exercise this authority, even on portions of Lots that may be partially outside of the Town of Delafield's zoning jurisdiction.
- d. Approval of a development shall be in accordance with the following conditions:
  - (1) All sanitary provisions must conform to the requirements of the State Department of Commerce, the Waukesha County Health Department, the local sanitary district and the Town;
  - (2) The proposed development must be in conformity with the Town comprehensive plan, must not be contrary to the general welfare or economic balance of the community and the benefits and amenities of the resultant development must justify the variation from the normal requirements of the district in which it is located as determined by the Town Board
  - (3) The provisions of sections 18.06 and 18.07 of this General Code shall govern the design and construction of all roads and public improvements. Any modification

of these standards must be consistent with good engineering practices and be approved in writing by the Town Board;

- (4) The provisions of section 18.07 shall govern with respect to dedication of public sites or payment in lieu of dedication; and
  - (5) The application of these regulations shall be limited to parcels of not less than 10 acres in area.
- e. Table 17-1 shall be utilized to determine the minimum amount of open space per development, minimum permanent common open space, minimum lot size and minimum open space per lot to be utilized for the development of a commercial planned unit development and associated platting of lots in the planned unit development:

TABLE 17-1

District	Title	Minimum Open Space for Development Area	Minimum Permanent Common Open Space	Minimum Individual Lot Size	Minimum Open Space Per Lot
B-2	Shopping Center District	50%	25%	2 acres	25%
B-3	Business Park District	75%	40%	2 acres	25%
M-1	Industrial District	60%	35%	2 acres	25%

- f. Lot width, setback, offsets and height shall follow the regulations found for each zoning district in 17.04.
- g. Adequate guarantee shall be provided for permanent retention of open space resulting from these regulations, either by private reservation for use of the building or property owners within the development or by public dedication. Any lot containing permanent common open space shall be owned in common by the owners of the properties that make up the development or by a business owners association and shall not be further divided nor shall they be used for residential, commercial or development purposes. Buildings or structures for noncommercial, recreational or accessory facilities may be permitted in such open space area subject to specific grant in the conditional use permit. Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for specific approval and inclusion in the terms of the permit. Ownership and tax liability of the open space areas shall be established in a manner acceptable to the Town and shall be made a part of the conditions of approval.
- h. A traffic study shall be prepared by a registered professional engineer to identify impacts to adjacent properties and roadways and to identify improvements or actions required to minimize or eliminate impacts. No use shall be approved unless the applicant implements the conclusions and recommendations of the study, unless otherwise waived by the Plan Commission. The traffic study shall be prepared in accordance with the following standards:

- Manual on Transportation Studies (Institute of Transportation Engineers (ITE))
  - Traffic Impact Analysis Guidelines (Wisconsin Department of Transportation)
  - Manual on Uniform Traffic Control Devices (Federal Highway Administration)
  - Trip Generation Manual (Institute of Transportation Engineers)
  - Other local, county or state standards
- i. Public sanitary sewer shall be available to service the development. If approved by the Town Board and, if applicable, the Waukesha County Environmental Health Department and local sanitary district, a private sewerage disposal system may be accepted as an alternative to the public facility required.
  - j. The developer shall submit a development plan and enter into an appropriate contract with the Town to guarantee the implementation of the development according to the terms and conditions established as part of the development plan approval.
  - k. The Plan Commission in making its recommendation and the Town Board in making its determination as to the approval or denial of the conditional use permit for the commercial planned unit development shall give consideration to the purposes in this section and be satisfied as to the following:
    - (1) That the proposed development is consistent with the spirit and intent of the chapter, is in conformity with the general character of the Town and would not be contrary to the general welfare and economic prosperity of the Town or of the immediate neighborhood, but rather that the benefits from the anticipated improved design of the resultant development justifies the variation from the normal requirements of this chapter through the application of this planned development section.
    - (2) That the size, quality and architectural design of all buildings in the project will not have an adverse effect upon the general character of the Town and surrounding neighborhood.
    - (3) That the provisions and facilities of the open space areas being provided is of such quality, size and aesthetic value to justify the approval of the project.
    - (4) That the setbacks shall be maintained along any boundary street of the project area as required by the existing underlying basic district.
    - (5) That no building shall be permitted closer to a side or rear boundary street of the project area as required by the existing underlying basic district.
    - (6) That there shall be no further division of any lot within the development without consideration and approval of a new conditional use permit.
    - (7) That deed restrictions or an appropriate contract with the Town assuring implementation of the development according to the above requirements is filed with the Waukesha County Register of Deeds.
  - l. The approval of a petition for conditional use shall be based on and include as conditions thereto the building, site and operational plans for the development as approved, as well as all other commitments offered as required in regard to project value, character or other factors

pertinent to an assurance that the proposed development will be carried out as presented for the project. After all conditions of a planned unit development project are certified by the Town Board as being completed, the uses established pursuant to the approved development plan and conditional use order shall be deemed to be permitted uses in the district in which it is located; however, the conditional use order shall remain in effect for purposes of ongoing compliance with the development plan.

- m. Any subsequent change or addition to an approved development plan shall first be submitted for approval to the Plan Commission and, if in the Commission's opinion such change or addition is not substantial, it may recommend approval to the Town Board without public hearing. If the Plan Commission deems that any proposed change is not acceptable, it shall recommend accordingly to the Town Board. Without limitation to the Plan Commission's right to determine any other change substantial, a change in any of the following respects shall be automatically construed as substantial:
  - (1) An increase in the number of buildings from that shown in the approved comprehensive project plan.
  - (2) A significant change in the size, value or type of structure from that indicated in the approved comprehensive project plan.
  - (3) The addition of any principal uses not included in the approved comprehensive project plan.
  - (4) A change in the basic concept of site development which would significantly alter the relationship of uses or open space to adjoining properties.
  - (5) Change of ownership.

#### **E. Conversion.**

1. **Where Permitted.** Subject to the provisions of subsection 2., conversion of the use of barns and farm buildings for the storage of machinery, equipment, vehicles, boats, furniture and similar items are conditional uses which may be permitted in the following districts

A-1 Agricultural District  
A-2 Rural Home District  
A-E Exclusive Agricultural  
M-1 Industrial District

2. **Standards Under Which Permitted.**

Conditional use status will not be granted to any conversion of the use of barns or farm buildings for the storage of machinery, equipment, vehicles, boats, furniture and similar items unless all of the following standards are met:

- a. Use shall be on lots of 10 acres or more.
- b. Buildings shall consist of the buildings as now exist on the premises. No additional buildings or additions may be made without the express approval of the Town in accordance with the terms of the applicable ordinances.

- c. A signed and sealed plat of survey shall be submitted detailing the size and offsets of all existing buildings.
- d. Access shall be from a public street.
- e. There shall be no storage outside.
- f. Water supply facilities and septic system, if any, shall be in accordance with the rules of the Waukesha County Division of Health and Department of Industry, Labor and Human Relations.
- g. Noise after the conversion shall be no greater than the noise level prior to the conversion.
- h. No commercial signs permitted.
- i. Site shall be landscaped prior to issuance of an occupancy permit.
- j. Hours and days of operation shall be no more than 7:00 AM to 7:00 PM, Monday through Sunday.
- k. No more than 20 drop-offs or withdrawals of allowed storage items per week.

**F. Elderly Housing Units.**

1. **Where Permitted.** Subject to the provisions of subsection 2., elderly housing units are conditional uses which may be permitted in the following districts:

R-1 Residential District  
 R-1(A) Residential District  
 R-2 Residential District  
 R-3 Residential District  
 R-L Residential Lake District  
 A-1 Agricultural District  
 A-2 Rural Home District  
 A-3 Suburban Home District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to elderly housing units unless all of the following conditions are met:

- a. The minimum lot area shall be 20,000 sq. ft.
- b. The minimum unused lot area per dwelling unit shall be 1500 sq. ft. This shall not include parking spaces or buildings.
- c. Side yard and rear yard setbacks shall be a minimum of 10' on each side and the road setback requirement shall be maintained.

- d. There shall be a minimum living area of 400 sq. ft. for an efficiency apartment, 550 sq. ft. for a one bedroom apartment and 750 sq. ft. for a two bedroom apartment. No dwelling unit shall have more than two bedrooms.
- e. There shall be one covered parking space per dwelling unit.
- f. Multi-story housing for the elderly shall be provided with elevators.
- g. Restrictions shall be placed on the development consistent with State and Federal regulations governing elderly housing.
- h. In the case of phased development of an elderly project as defined, the developer shall present evidence to the Plan Commission that at least 50% of all previous phases are occupied.

**G. Group Day Care Center.**

1. **Where Permitted.** Subject to the provisions of subsection 2., group day care centers are conditional uses which may be permitted in the following districts:

R-1 Residential District  
 R-1A Residential District  
 R-2 Residential District  
 R-3 Residential District  
 R-L Residential Lake District  
 B-1 Restricted Business District  
 B-2 Shopping Center District  
 B-3 Business Park District  
 A-1 Agricultural District  
 A-2 Rural Home District  
 A-3 Suburban Home District  
 M-1 Industrial District

2. **Standards Under Which Permitted.**

- a. Conditional use status shall not be granted to a group day care center unless the property owner's written permission is obtained and submitted as part of the conditional use permit application.
- b. The facility may not open until proof of licensure from the State of Wisconsin is provided to the Town Clerk.
- c. Access to the site meets WisDOT site distance standards.
- d. Drop-off and pick-up areas can accommodate projected traffic.
- e. Parking stalls are provided for employees in accordance with Section 17.09 I. of the Town Code.

**H. Hobby Kennels.**

1. **Where Permitted.** Subject to the provisions of subsection 2., a hobby kennel, as defined in section 17.02, is a conditional use which may be permitted in the following districts:

R-1 Residential District  
R-1A Residential District  
R-2 Residential District  
R-3 Residential District  
R-L Residential Lake District  
A-1 Agricultural District  
A-2 Rural Home District  
A-3 Suburban Home District  
A-E Exclusive Agricultural District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to a hobby kennel unless all of the following standards are met:

- a. The applicant must provide an annual report that they meet the standards herein, summary of complaints, if any and any changed conditions in the neighborhood.
- b. The lot must be at least 1 1/2 acres in area.
- c. Applicant shall provide a signed and sealed plat of survey showing the location of all features on the lot, adjacent structures, outdoor kennel location, fences and areas where household pets will be let out.
- d. Plan shall be submitted to address household pets that get out of the kennel.
- e. Plan shall be submitted detailing safety measures to be taken to assure that household pets do not run loose in the area.
- f. The kennel must be a minimum of 50' from the closest lot line.
- g. No more than 3 household pets shall be permitted on a 1 1/2 acre site, plus 2 household pets per additional acre up to 10 household pets maximum.

**I. Intermediate Day Care Home.**

1. **Where Permitted.** Subject to the provisions of subsection 2., intermediate day care homes are conditional uses which may be permitted in the following districts:

R-1 Residential District  
R-1(A) Residential District  
R-2 Residential District  
R-3 Residential District  
R-L Residential Lake District  
A-1 Agricultural District

A-2 Rural Home District  
A-3 Suburban Home District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to an intermediate day care home unless all of the following conditions are met:

- a. The lot is at least 7200 square feet in area.
- b. A minimum of 140 square feet of living space per child is provided.
- c. A minimum of 100 square feet of fully enclosed outside play area shall be provided per child at maximum permitted occupancy.
- d. Conditional use status shall not be granted to a group day care center unless the property owner's written permission is obtained and submitted as part of the conditional use permit application.
- e. The facility may not open until proof of licensure from the State of Wisconsin is provided to the Town Clerk.
- f. Access to the site meets WisDOT site distance standards.
- g. Drop-off and pick-up areas can accommodate projected traffic.
- h. Parking stalls are provided for employees in accordance with Section 17.09 I. of the Town Code.

J. **Keeping of Poultry or Livestock.**

1. **Where Permitted.** Subject to the provisions of subsection 2., the keeping of poultry or livestock is a conditional use which may be permitted in the following districts:

A-2 Rural Home District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to the keeping of poultry or livestock unless all of the following standards are met:

- a. The keeping of poultry, other than chickens, fowl and domestic livestock must be on lots of 3 acres or more.
- b. Maximum practical conditions of neatness and sanitation are maintained and all fowl are kept confined or enclosed.
- c. Not more than one head of livestock or ten fowl shall be kept per acre of land except where such use existed prior to the date of the chapter as principal commercial or agricultural use, such use



may be continued subject to the limitations regulating a nonconforming use as regulated by this chapter.

The keeping of hogs, male goats or furbearing animals must be on lots of 20 acres or more.

**K. Legal Nonconforming Uses.**

**Where Permitted.** Subject to the provisions of Section 7 of this Chapter, a legal nonconforming use may be granted conditional use status in the district in which it is located subject to submitting a petition under this section.

**L. Master Sign Program.**

**1. Where Permitted.**

A-1 Agricultural District  
A-E Exclusive Agricultural District  
A-2 Rural Home District  
B-1 Restricted Business District  
B-2 Shopping Center District  
B-3 Business Park District  
M-1 Industrial District  
P-1 Park and Recreation District  
WF-1 Wetland-Floodplain District

**2. Standards Under Which Permitted.**

- a. All signs shall be uniform in theme, size, color and style.
- b. Use shall be for multi-tenant operations, office parks, industrial parks, multi-tenant office and retail buildings, and commercial developments that include separate commercial activities.
- c. Applicant shall provide mock ups of all signs and include dimensions, area, colors, height, material, method of attachment, lighting and site plan with location shown.
- d. The requirements of Section 17.08 may be modified by the express terms of the Master Sign Program conditional use order.

**M. Private Clubs and Outdoor Recreational Facilities Such as Recreational Camps, Golf Courses, Bathing Beaches and Resorts.**

1. **Where Permitted.** Subject to the provisions of subsection 2., private clubs and outdoor recreational facilities such as recreational camps, golf courses, bathing beaches and resorts are conditional uses which may be permitted in the following districts:

All Districts.

**2. Conditions Under Which Permitted.**

Conditional use status shall not be granted to private clubs or outdoor recreational facilities such as recreational camps, golf courses, bathing beaches and resorts unless all of the following conditions are met:

- a. The lot is at least 3 acres in area, except that this area requirement shall not apply in the following districts:
  - B-1 Restricted Business District
  - B-2 Shopping Center District
  - B-3 Business Park District
  - M-1 Industrial District
- b. No building, other than one used only for residence purposes, shall be closer than 75' to the lot line of an adjoining lot in a district permitting residential use.
- c. No such permitted use shall include the operation of a commercial facility such as a bar or restaurant except as may be specifically authorized in the grant of permit.
- d. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights and the like, other than traffic control lights, are specifically prohibited.

**N. Quarrying.**

1. **Where Permitted.** Subject to the provisions of subsection 2., quarrying, as defined in this chapter, is a conditional use which may be permitted in the following districts:

M-1 Industrial District

2. **Standards Under Which Permitted.**

Conditional use status shall not be granted to a quarrying operation unless all of the following standards are met:

- a. A quarrying permit for such operation must be obtained from the Town Board. Such permit shall be for an initial period as is deemed appropriate to the specific situation but not to exceed 5 years and may be renewed thereafter for periods not to exceed 3 years provided application therefor shall be made at least 60 days and no more than 120 days before expiration of the original permit. Application after such date shall be treated as an original application.
- b. Application for a quarrying permit shall be made on forms supplied by the Town Clerk.
- c. The application for a quarrying permit shall be accompanied by: a fee as set from time to time by the Town Board to defray the cost of notification and holding of public hearing; a full and adequate description of all phases of the contemplated operation and the specific mention of type of machinery and equipment which will be or might be necessary to carry on the operation; where the operation is to include the washing of sand and gravel, the estimated daily quantity of water required, its source and its disposition shall be made part of the description; a legal description of the proposed site with a map showing its location with indications of existing or proposed private access roads, and of

existing or proposed public highways adjacent to the site which will be affected by the operation; a topographic map of the area at a minimum contour interval of 5' extending beyond the site to the nearest public street or highway or to a minimum distance of 300' on all sides; a restoration plan as required by subparagraph d. below; the names and addresses of the owners of all properties within 1/2 mile of the perimeter of the proposed quarrying operation.

- d. In order to insure that the area of quarrying operation shall be restored to a condition of practical usefulness and reasonable physical attractiveness, the owner or operator shall, prior to the issuance of a permit, submit to the Town Board a plan for such restoration in the form of the following:
- (1) An agreement with the Town whereby the applicant contracts to restore the premises to a condition and within a time satisfactory to the Town;
  - (2) A physical restoration plan showing the proposed contours after restoration, plantings and other special features of restoration and the method by which such restoration is to be accomplished;
  - (3) A certified check or other financial guarantee satisfactory to the Town, in an amount sufficient in the opinion of the Town Board to secure the performance of the restoration agreement;
  - (4) Such agreement and financial guarantee shall be in a form approved by the Town Attorney;
  - (5) In the event of the applicant's failure to fulfill this agreement, such bond, check or other financial guarantee shall be deemed forfeited for the purpose of enabling the Town to perform the restoration;
  - (6) Restoration shall proceed as soon as practicable and at the order and direction of the Town Engineer. However, the owner or operator may, at his option, submit a plan for progressive restoration as the quarrying operation is being carried on. The required bond in such case may cover progressive stages of the restoration for periods of not less than 2 years;
  - (7) At any stage during the restoration, the plan may be modified by mutual agreement between the Town Board, after referral to the Plan Commission and the owner or operator;
  - (8) Where there is any backfilling, the clean material used or the method of fill shall not be such as to create a health hazard nor which would be objectionable because of odor, combustibility or unsightliness. No more than 10 loads per day shall be allowed to dump clean fill into the site. In any case, the finished grade of the restored area, except for rock faces, outcroppings, water bodies or areas of proposed building or paving construction shall be of a sufficient depth of earth to support plant growth;
  - (9) Within one year after the cessation of the operation, all temporary structures (excepting fences), equipment, stockpiles, rubble heaps or other debris shall be removed or backfilled into the excavation so as to leave the premises in a neat and orderly condition;

- (10) In any restoration procedure which takes place in sand or gravel pits or on other sites where the material is of a loose or friable nature, no slope shall be left which is steeper than a ratio of four horizontal to one vertical. In no case shall any slope exceed the normal angle of slippage of the material involved.
- e. The application and all data and information pertaining thereto shall be referred to the Town Board for a joint public hearing with the Plan Commission, after which the Plan Commission shall provide a report and recommendation to the Town Board within a reasonable time after the public hearing.
- f. Notices shall be sent through the mail or otherwise placed in the hands of all owners of land in the Town and to the Clerks of adjoining municipalities who have land which lies within 1/4 mile of the perimeter of the proposed quarrying operation. These notices shall be mailed or delivered at least 10 days prior to the date of hearing. Substantial compliance with the notice requirements of this section shall be deemed sufficient.
- g. The Town Board shall, within a reasonable time after receipt of the recommendation, approve or disapprove the application for the proposed quarrying operation and shall be guided by consideration of the public health, safety and welfare and shall give particular consideration to the following factors in making their decision: the effect of the proposed operation on existing roads and traffic movement in terms of adequacy, safety and efficiency; the effect of the proposed operation on drainage and water supply; the possibility of soil erosion as a result of the proposed operation; the degree and effect on dust, noise, smoke and air pollution as a result of the proposed operation; the practical possibility of restoration of the site; the effect of the proposed operation on the natural beauty, character, tax base, land value and land uses in the area; the most suitable land use for the area with particular consideration for future residential value.
- h. Any conditions necessary to the granting of a permit shall be in writing and copies made a part of the permit and a part of the records of the Town.
- i. The procedures set forth above shall also apply to applications for renewal of a permit. Determination in regard to renewal shall be based particularly on an evaluation of the effect of the continuance of the use with relation to changing conditions in the area. Where renewal is not granted, the reasons for refusal shall be presented to the applicant in writing and made a part of the records of the Town.
- j. No part of the quarrying operation shall be permitted closer than 1,000', nor shall any accessory access road, parking area or office building be permitted closer than 500' to the district zoned Rural Home, Suburban Home or Residential at the time of the grant of the permit, except with the written consent of the owners of a Rural Home, Suburban Home or Residentially zoned properties within 1,000' but in no case shall such operation be permitted closer than 200' to a Residential District; no quarrying operation shall be permitted if 30 or more families reside within a band 1/2 mile wide around the perimeter of the proposed operation.
- k. No part of the quarrying operation other than access roads shall be located closer than 200' nor shall any accessory parking area, stock pile or office building be located closer than 100' to the base setback line along any street or highway.
- l. No part of the quarrying operation shall be permitted closer than 200', nor shall any accessory access road, parking area or office building be permitted closer than 50' to any property line except with the written consent of the owner of the adjoining property or

except where the line is abutting an existing quarrying operation, but in no case shall such operation be closer than 20' to any property line except by agreement between abutting quarrying operations or be in conflict with the provisions of this chapter relating to preservation of topography.

- m. Fencing or other suitable barrier shall be erected and maintained around the site or around portions of the site where, in the determination of the Town Board, such fencing or barrier is necessary for the protection of the public, and shall be of a type approved by the Town Board.
- n. All machinery and equipment used in the quarrying operation shall be constructed, maintained and operated in such a manner as to minimize dust, smoke, air pollution, noise and vibration.
- o. Access and haulage roads on the site shall be maintained in a dust free condition by surfacing or treatment as directed by the Town Engineer.
- p. The crushing, washing, refining or other processing other than the initial removal of material, may be permitted as an accessory use only as specifically authorized under the terms of the grant of permit.
- q. In stone quarries the production or manufacturing of veneer stone, sills, lintels, cut flagstone, hearthstones, paving stone and similar architectural or structural stone and the storing or stockpiling of such products on the site shall be considered a permissible part of the operation, provided such production does not require the use of crushing or other heavy machinery except as may be specifically authorized under the terms of the permit.
- r. The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready-mixed concrete and any similar production or manufacturing processes which might be related to the quarrying operation may be permitted as an accessory use only as specifically authorized under the terms of the permit.
- s. The washing of sand and gravel shall be prohibited in any operation where the source of water is of doubtful capacity or where the quantity of water required will, in the opinion of the Town Engineer, seriously affect the supply of water for other uses in the area or where the drainage from such washing would result in silting or pollution of the stream or water course.
- t. The planting of trees and shrubs and other appropriate landscaping shall be provided where deemed necessary by the Town Board to screen the operation so far as practical from normal view, to enhance the general appearance from the public right-of-way, and generally to minimize the damaging effect of the operation on the beauty and character of the surrounding country side. Such planting shall be started as soon as practical, but no later than one year after quarrying operations have begun and shall be done according to the decision of the Town Board.
- u. Quarrying operations shall not begin before the hour of 7 a.m. and shall not continue after the hour of 6 p.m. and no operation shall take place on Sundays or legal holidays. During periods of national or unusual emergency, time and hours of operation may be altered at the discretion of the Town Board and through the issuance of a special permit which shall be renewable at 30 day intervals.

- v. When the operation is limited to the removal of topsoil, the Town Board may, consistent with the intent of these regulations, modify any or all of the provisions of this section, provided however, that in no case shall operations be permitted closer than 10' from any property line, or to a depth in excess of 18" or so as to adversely affect the drainage of the area and in such instances the operator shall restore the excavated area with topsoil to a depth of 4" and seed the same with grass.
- w. The provisions of this section shall not apply to an operation which is incident to the legitimate use of the premises, provided, however, where such operation involves the commercial disposal of the material removed, approval of the Town Board shall be required and such operation shall be limited to a maximum period of 6 months.
- y. Application to existing operations:
  - (1) Within 60 days after the adoption of this chapter, all existing quarrying operations shall be required to register with the Town Clerk submitting pertinent data relative to the present operation including the boundaries of the actual operation and of the ownership. A quarrying permit shall be granted to such existing operation subject to compliance with the operation requirements herein where they can be reasonably applied under existing circumstances.
  - (2) There shall be required within one year after adoption of this chapter, the submission of a plan for restoration of the site of any existing quarrying operation as provided by subparagraph d. above. The plan for restoration in such case shall not, however, impose requirements which are economically unreasonable or unreasonable from an engineering standpoint with respect to conditions resulting from operations prior to enactment of this chapter.
  - (3) Within 3 years after the date of this chapter any such existing operation shall be required to make application for a renewal permit the same as for reapplication in the case of a new operation under this chapter.

**O. Riding Academies or Commercial Stables.**

1. **Where Permitted.** Subject to the provisions of subsection 2., riding academies and commercial stables are conditional uses which may be permitted in the following districts:
  - A-1 Agricultural District
  - A-2 Rural Home District
  - A-E Exclusive Agricultural District
2. **Standards Under Which Permitted.** Conditional use status shall not be granted to riding academies or commercial stables unless all of the following conditions are met;
  - a. The lot is at least 7 ½ acres in area.
  - b. Building location:
    - (1) All buildings shall comply with the setback and offset provisions of the underlying zoning district, except as provided below.

- (2) No new building housing animals shall be closer than 100' to the lot line of an adjoining lot in a district permitting residential use. All other new buildings shall meet the offset and/or setback requirements of the zoning district in which they are located.
- (3) Existing buildings constituting legal nonconforming structures may remain although their use may be restricted in the grant of permit.
- (4) No existing building, except one designated as a rustic structure pursuant to Town ordinance, which is located closer than 100' to the lot line of an adjoining lot in a district permitting residential use, may be used to house animals except as may be specifically authorized in the grant of permit after review by the Plan Commission of the following factors:
  - the overall size of the property;
  - the nature of the building's use;
  - the intensity of the building's use, including the type and number of animals to be housed, and the hours and days of operation;
  - the pattern and location of other activity on the property;
  - the location and use of buildings on neighboring properties;
  - the activities conducted on neighboring properties;
  - the consent of neighboring property owners to the intended use; and, - provisions for manure storage and disposal.
  - the location of the existing building in relationship with the adjacent property line.

Any such building may be reconstructed or enlarged only as specifically authorized in the grant of permit or an amendment thereto.

- c. No such permitted use shall include the operation of a commercial facility such as a bar or restaurant except as may be specifically authorized in the grant of permit.
- d. No lighting installations shall be permitted which create a hazard to traffic or nuisance to surrounding property. The use of flashing or revolving spot lights, are specifically prohibited.
- e. Applicant shall submit a manure management plan to Waukesha County Environmental Health Division and the Town for approval, which includes the following information and any other information required by Waukesha County:
  - (1) number and kind of animals
  - (2) scaled site plan
  - (3) detailed soil investigation with reference to ground water and bedrock presence
  - (4) details of any structures to be built for animal waste management
  - (5) construction timeline
  - (6) details of manure transfer system
  - (7) plans for utilization of the manure, including information on land availability, soil types, and methods and rates of application
- f. A lighting location and iso-footcandle plan shall be submitted showing cut-off type fixtures, pole types, height. Light at all property lines shall be 0 foot-candles.

**P. Self-storage Facilities.**

1. **Where Permitted.** Subject to the provisions of subsection 2., self-storage facilities as defined in Section 17.02, are conditional uses which may be permitted in the following district:

M-1 Industrial District

2. **Standards Under Which Permitted.**

Conditional use status will not be granted to a self-storage facility unless all of the following standards are met:

- a. Lot must be a conforming lot and shall be 3 acres or more.
- b. Building location, base height and area regulations shall be as provided for in the underlying M-1 zoning district regulations.
- c. Buildings shall consist of quality materials such as brick, wood, stone, decorative concrete block and glass. The Plan Commission may allow the use of metal building components and exterior finish insulation systems (EFIS) if it is incidental to the primary building architecture or screened from public view. Metal siding shall not be permitted. Flat roofed buildings shall not be permitted. Pitched roof shall be 4:12 or steeper. Access doors to individual storage units shall not be located on the exterior of any structure, except as follows: 1. In the case of a structure that contains interior storage spaces, up to two vehicle access doors may be allowed on the exterior face of the structure; 2. In the case of multiple buildings that have exterior access to individual storage units, only those locations that face another interior storage exterior building face with individual doors shall be allowed. The exterior walls of the outermost buildings and ends of the individual buildings shall not include any doors or individual storage units. Color scheme for the buildings shall be shown on the plans and samples submitted to the Plan Commission for approval. Colors that are out of character with the surrounding developments and residential areas shall be prohibited.
- d. A signed and sealed plat of survey shall be submitted detailing the size and offsets of all existing buildings.
- e. Access shall be from a public street.
- f. There shall be no outside storage.
- g. Water supply facilities and septic system, if any, shall be in accordance with the rules of the Waukesha County Division of Environmental Health and the Wisconsin Department of Commerce.
- h. Hours and days of operation shall be no more than 6:00 AM to 9:00 PM, Monday through Sunday unless other hours are approved by the Plan Commission and Town Board.
- i. The exterior of all structures, fences, planting screens, etc., shall be kept in good condition at all times by painting, trimming or other acceptable maintenance procedures. Subsequent additions or changes in the building and grounds shall conform to or enhance the original construction and be consistent therewith.
- j. All appurtenances placed on the roof of any structure such as air conditioning units shall be housed in a penthouse or otherwise screened from view.



- k. Perimeter security fencing shall be provided for safety and electronic surveillance. Security lighting from dusk to dawn is required. Perimeter fencing shall be ornamental/decorative fencing (no wood paneling or chain link type fencing) and shall not be permitted within the base setback area. Where walls or fencing is used, plant material shall be placed intermittently along the wall or fence to soften the effect of the wall or fence.
- l. Landscaping shall meet the following standards:
  - 1. All lands not used for buildings, parking lots, driveways, etc., shall be landscaped and kept in good appearance at all times, including required watering of lawns and shrubbery.
  - 2. The landscape features shall provide sufficient screening to shield adjacent properties and roadways from adverse effects of the facility and shield the development from the negative impacts on adjacent uses or streets.
  - 3. Applicant shall prepare and submit a landscape plan. The plan shall be prepared and stamped by a licensed landscape architect. The plans shall include existing and proposed features of the site; proposed vegetation to provide screening of the facility; a plant schedule indicating the material names and types, number of plants and size of plants at time of planting; and planting details. After installation of the landscape features, a certification from the landscape architect stating that all plants have been installed according to the approved plans shall be submitted.
  - 4. Each tree shall have an initial caliper of no less than two inches and a height of at least seven feet. Shrubs and bushes shall be a minimum of 3 feet in height at time of planting.
  - 5. The owner shall be responsible for the maintenance of all landscaping and maintaining the landscaping in good condition as to represent a healthy, neat and orderly appearance that shall be kept free from refuse and debris. The owner shall promptly replace any landscaping which has died or is damaged beyond repair. The replacement plantings shall be the same size and quality as the approved landscape plan. The site's landscaping shall be maintained perpetually in accordance with the approved landscape plan.
- m. The site and operational plans shall include design features necessary to ensure that traffic generated by the operation, especially that involving heavy trucks, does not have an adverse effect on existing or planned roads and traffic movement considering especially adequacy, safety and efficiency.
- n. The operation plan submitted for Plan Commission approval shall specify and quantitatively describe any noise, vibration, dust, gas, smoke, toxic matter and odors produced by the operation and plans for containing or abating such nuisance.
- o. The hours of operation and nighttime (security) lighting plans shall be included in the plan of operation submitted for Plan Commission approval.
- p. A lighting location and iso-footcandle plan shall be submitted showing cut-off type fixtures, pole types and height. Light at all property lines shall be 0 footcandles.

#### **Q. Solar Energy Systems**

- 1. **Where Permitted.** Subject to the provisions of this subsection, solar energy systems as defined in Wisconsin Statutes Section 13.48(2)(h) 1.g. are a conditional use which may be permitted in any district in the Town of Delafield.

2. **Standards Under Which Permitted.**

- a. District Regulations. The location, height, area, yard, parking, loading, traffic and highway access and other regulations of the district in which the use is located shall not apply to the solar energy system, unless the Town Board finds that the restriction satisfies one of the following conditions.

- i. Serves to preserve or protect the public health or safety.
- ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.
- iii. It allows for an alternative system of comparable cost and efficiency.

If one or more of the foregoing conditions is found to apply with regard to any such restriction of this Code, then such restriction shall apply to the solar energy system.

- b. The Town Plan Commission may recommend, and the Town Board may require compliance with such other conditions as may be deemed necessary in the specific situation, provided that any such restriction imposed must be found to meet the following conditions:

- i. Serves to preserve or protect the public health or safety.
- ii. It does not significantly increase the cost of the system or significantly decrease its efficiency.
- iii. It allows for an alternative system of comparable cost and efficiency.

**SECTION 18: CONTINUATION OF EXISTING PROVISIONS.**

The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution or proceeding brought for the enforcement of any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provisions is stayed pending the final resolution of such actions, including appeals.

For any Residential Planned Unit Development conditional use permit granted pursuant to Section 17.05 5. AM. of the Town of Delafield Zoning Code prior to the effective date of this ordinance, the repeal of such code section is stayed solely for such existing conditional use permits, for the duration of the conditional use permits, and the conditional use orders remain in effect pursuant to their terms. Other than Residential

Planned Unit Developments, any conditional use permit granted prior to the effective date of this ordinance pursuant to a Section of the Town of Delafield Zoning Code that is hereby repealed, that is no longer an allowed use, shall be a legal non-conforming use, subject to all terms and conditions stated in the conditional use order. Any conditional use permit granted prior to the effective date of this ordinance that requires compliance with a Section of the Town of Delafield Zoning Code that is hereby repealed, shall continue to require compliance with the referenced Code Section in existence immediately prior to the repeal, and the repeal of such provisions is stayed solely for such existing conditional use permits. These continuation provisions are intended to preserve the status quo for all rights and responsibilities incurred or accrued prior to the adoption of this ordinance. Nothing herein shall be interpreted to prevent existing conditional use permit holders from applying to amend their conditional use pursuant to all laws in effect at the time of the application.

SECTION 19: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinance whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 20: EFFECTIVE DATE.

This ordinance shall be effective upon publication or posting as provided by law.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

TOWN OF DELAFIELD

\_\_\_\_\_  
Lawrence G. Krause, Town Chairman

ATTEST:

\_\_\_\_\_  
Mary Elsner, Town Clerk

This ordinance posted or published \_\_\_\_\_.

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